

HOUSE CS FOR CS FOR SENATE BILL NO. 218(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/5/06

Referred: Today's Calendar

Sponsor(s): SENATORS BUNDE, Guess, Dyson, Elton, Kookesh, Green, Olson, Hoffman, Seekins

REPRESENTATIVES Neuman, Stoltze, Lynn, Samuels, Hawker, Meyer, Harris, McGuire, Anderson, Kelly, Gatto, Dahlstrom, Elkins, Ramras, LeDoux, Chenault, Olson, Croft

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to sex offenders and child kidnappers; relating to periodic polygraph**
2 **examinations for sex offenders released on probation or parole; relating to sexual abuse**
3 **of a minor; relating to the definitions of 'aggravated sex offense' and 'child kidnapping';**
4 **relating to penalties for failure to report child abuse or neglect; relating to sentencing**
5 **for sex offenders and habitual criminals; and providing for an effective date."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** AS 11.41.436(a) is amended to read:

8 (a) An offender commits the crime of sexual abuse of a minor in the second
9 degree if,

10 (1) being 17 [16] years of age or older, the offender engages in sexual
11 penetration with a person who is 13, 14, or 15 years of age and at least four [THREE]
12 years younger than the offender, or aids, induces, causes, or encourages a person who
13 is 13, 14, or 15 years of age and at least four [THREE] years younger than the

offender to engage in sexual penetration with another person;

(2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;

(3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian;

(4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455(a)(2) - (6); [OR]

(5) being 18 years of age or older, the offender engages in sexual contact with a person who is under 16 years of age, and

(A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or

(B) the offender occupies a position of authority in relation to the victim;

(6) being 20 years of age or older, the offender engages in sexual penetration with a person who is 16 or 17 years of age and at least four years younger than the offender, and the offender occupies a position of authority in relation to the victim; or

(7) being under 16 years of age, the offender engages in sexual penetration with a person who is under 13 years of age and at least three years younger than the offender.

* Sec. 2. AS 11.41.438(a) is amended to read:

(a) An offender commits the crime of sexual abuse of a minor in the third degree if

[(1)] being **17** [16] years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least **four** [THREE] years younger than the offender [;

(2) BEING 18 YEARS OF AGE OR OLDER, THE OFFENDER

ENGAGES IN SEXUAL PENETRATION WITH A PERSON WHO IS 16 OR 17 YEARS OF AGE AND AT LEAST THREE YEARS YOUNGER THAN THE OFFENDER, AND THE OFFENDER OCCUPIES A POSITION OF AUTHORITY IN RELATION TO THE VICTIM; OR

(3) BEING UNDER 16 YEARS OF AGE, THE OFFENDER ENGAGES IN SEXUAL PENETRATION WITH A PERSON WHO IS UNDER 13 YEARS OF AGE AND AT LEAST THREE YEARS YOUNGER THAN THE OFFENDER].

* **Sec. 3.** AS 12.55.100 is amended by adding a new subsection to read:

(e) While on probation and as a condition of probation for a sex offense, the defendant shall be required to submit to regular periodic polygraph examinations. In this subsection, "sex offense" has the meaning given in AS 12.63.100.

* **Sec. 4.** AS 12.55.125(i) is amended to read:

(i) A defendant convicted of

(1) sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, and the victim was
(i) less than 13 years of age, 25 to 35 years;
(ii) 13 years of age or older, 20 to 30 [EIGHT TO 12]
 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 [12 TO 16] years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 30 to 40 [15 TO 20] years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 35 to 45 [20 TO 30]

1 years;

2 (E) if the offense is a third felony conviction and the defendant
3 is not subject to sentencing under (F) of this paragraph or (I) of this section, **40**
4 **to 60** [25 TO 35] years;

5 (F) if the offense is a third felony conviction, the defendant is
6 not subject to sentencing under (I) of this section, and the defendant has two
7 prior convictions for sexual felonies, **99** [30 TO 40] years;

8 (2) attempt, conspiracy, or solicitation to commit sexual assault in the
9 first degree or sexual abuse of a minor in the first degree may be sentenced to a
10 definite term of imprisonment of not more than **99** [30] years and shall be sentenced to
11 a definite term within the following presumptive ranges, subject to adjustment as
12 provided in AS 12.55.155 - 12.55.175:

13 (A) if the offense is a first felony conviction, [AND] does not
14 involve circumstances described in (B) of this paragraph, **and the victim was**

15 **(i) under 13 years of age, 20 to 30 years;**

16 **(ii) 13 years of age or older, 15 to 30** [FIVE TO
17 EIGHT] years;

18 (B) if the offense is a first felony conviction, and the defendant
19 possessed a firearm, used a dangerous instrument, or caused serious physical
20 injury during the commission of the offense, **25 to 35** [10 TO 14] years;

21 (C) if the offense is a second felony conviction and does not
22 involve circumstances described in (D) of this paragraph, **25 to 35** [12 TO 16]
23 years;

24 (D) if the offense is a second felony conviction and the
25 defendant has a prior conviction for a sexual felony, **30 to 40** [15 TO 20]
26 years;

27 (E) if the offense is a third felony conviction, does not involve
28 circumstances described in (F) of this paragraph, and the defendant is not
29 subject to sentencing under (I) of this section, **35 to 50** [15 TO 25] years;

30 (F) if the offense is a third felony conviction, the defendant is
31 not subject to sentencing under (I) of this section, and the defendant has two

1 prior convictions for sexual felonies, 99 [20 TO 30] years;

2 (3) sexual assault in the second degree, sexual abuse of a minor in the
3 second degree, unlawful exploitation of a minor, or distribution of child pornography
4 may be sentenced to a definite term of imprisonment of not more than 99 [20] years
5 and shall be sentenced to a definite term within the following presumptive ranges,
6 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

7 (A) if the offense is a first felony conviction, five to 15 [TWO
8 TO FOUR] years;

9 (B) if the offense is a second felony conviction and does not
10 involve circumstances described in (C) of this paragraph, 10 to 25 [FIVE TO
11 EIGHT] years;

12 (C) if the offense is a second felony conviction and the
13 defendant has a prior conviction for a sexual felony, 15 to 30 [10 TO 14]
14 years;

15 (D) if the offense is a third felony conviction and does not
16 involve circumstances described in (E) of this paragraph, 20 to 35 [10 TO 14]
17 years;

18 (E) if the offense is a third felony conviction and the defendant
19 has two prior convictions for sexual felonies, 99 [15 TO 20] years;

20 (4) sexual assault in the third degree, incest, indecent exposure in the
21 first degree, possession of child pornography, or attempt, conspiracy, or solicitation to
22 commit sexual assault in the second degree, sexual abuse of a minor in the second
23 degree, unlawful exploitation of a minor, or distribution of child pornography, may be
24 sentenced to a definite term of imprisonment of not more than 99 [10] years and shall
25 be sentenced to a definite term within the following presumptive ranges, subject to
26 adjustment as provided in AS 12.55.155 - 12.55.175:

27 (A) if the offense is a first felony conviction, two to 12 [ONE
28 TO TWO] years;

29 (B) if the offense is a second felony conviction and does not
30 involve circumstances described in (C) of this paragraph, eight to 15 [TWO
31 TO FIVE] years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 12 to 20 [THREE TO SIX] years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 15 to 25 [THREE TO SIX] years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 [SIX TO 10] years.

* **Sec. 5.** AS 12.55.125(j) is amended to read:

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010, or (2) definite term of imprisonment under (l) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving [THE GREATER OF (A)] one-half of the definite term [OR (B) 30 YEARS]. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

* **Sec. 6.** AS 12.55.125(l) is amended to read:

(l) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of [AT LEAST 40 YEARS BUT NOT MORE THAN] 99 years when the defendant has been previously convicted of two or more most serious felonies [AND THE PROSECUTING ATTORNEY HAS FILED A NOTICE OF INTENT TO SEEK A DEFINITE SENTENCE UNDER THIS SUBSECTION AT THE TIME THE DEFENDANT WAS ARRAIGNED IN SUPERIOR COURT]. If a defendant is sentenced to a definite term under this subsection,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

* **Sec. 7.** AS 12.55.125 is amended by adding a new subsection to read:

(o) Other than for convictions subject to a mandatory 99-year sentence, the court shall impose, in addition to an active term of imprisonment imposed under (i) of this section, a minimum period of (1) suspended imprisonment of five years and a minimum period of probation supervision of 15 years for conviction of an unclassified felony, (2) suspended imprisonment of three years and a minimum period of probation supervision of 10 years for conviction of a class A or class B felony, or (3) suspended imprisonment of two years and a minimum period of probation supervision of five years for conviction of a class C felony. The period of probation is in addition to any sentence received under (i) of this section and may not be suspended or reduced. Upon a defendant's release from confinement in a correctional facility, the defendant is subject to this probation requirement and shall submit and comply with the terms and requirements of the probation.

* **Sec. 8.** AS 12.63.100(1) is amended to read:

(1) "aggravated sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, "sexual offense" has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first degree; or

(iv) sexual abuse of a minor in the second degree; or

(C) a crime, or an attempt, solicitation, or conspiracy to commit

1 a crime, under AS 11.41.410, 11.41.434, or a similar law of another
 2 jurisdiction **or a similar provision under a former law of this state;**

3 * **Sec. 9.** AS 12.63.100(2) is amended to read:

4 (2) "child kidnapping" means

5 (A) a crime under AS 11.41.100(a)(3), or a similar law of
 6 another jurisdiction, in which the person committed or attempted to commit
 7 kidnapping;

8 (B) a crime under AS 11.41.110(a)(3), or a similar law of
 9 another jurisdiction, in which the person committed or attempted to commit
 10 kidnapping if the victim was under 18 years of age at the time of the offense;
 11 or

12 (C) a crime, or an attempt, solicitation, or conspiracy to commit
 13 a crime, under AS 11.41.300, or a similar law of another jurisdiction **or a**
 14 **similar provision under a former law of this state,** if the victim was under
 15 18 years of age at the time of the offense;

16 * **Sec. 10.** AS 33.16.150(a) is amended to read:

17 (a) As a condition of parole, a prisoner released on special medical,
 18 discretionary, or mandatory parole

19 (1) shall obey all state, federal, or local laws or ordinances, and any
 20 court orders applicable to the parolee;

21 (2) shall make diligent efforts to maintain steady employment or meet
 22 family obligations;

23 (3) shall, if involved in education, counseling, training, or treatment,
 24 continue in the program unless granted permission from the parole officer assigned to
 25 the parolee to discontinue the program;

26 (4) shall report

27 (A) upon release to the parole officer assigned to the parolee;

28 (B) at other times, and in the manner, prescribed by the board
 29 or the parole officer assigned to the parolee;

30 (5) shall reside at a stated place and not change that residence without
 31 notifying, and receiving permission from, the parole officer assigned to the parolee;

(6) shall remain within stated geographic limits unless written permission to depart from the stated limits is granted the parolee;

(7) may not use, possess, handle, purchase, give, distribute, or administer a controlled substance as defined in AS 11.71.900 or under federal law or a drug for which a prescription is required under state or federal law without a prescription from a licensed medical professional to the parolee;

(8) may not possess or control a firearm; in this paragraph, "firearm" has the meaning given in AS 11.81.900;

(9) may not enter into an agreement or other arrangement with a law enforcement agency or officer that will place the parolee in the position of violating a law or parole condition without the prior approval of the board;

(10) may not contact or correspond with anyone confined in a correctional facility of any type serving any term of imprisonment or a felon without the permission of the parole officer assigned to a parolee;

(11) shall agree to waive extradition from any state or territory of the United States and to not contest efforts to return the parolee to the state;

(12) shall provide a blood sample, an oral sample, or both, when requested by a health care professional acting on behalf of the state to provide the sample or samples, or an oral sample when requested by a juvenile or adult correctional, probation, or parole officer, or a peace officer, if the prisoner is being released after a conviction of an offense requiring the state to collect the sample or samples for the deoxyribonucleic acid identification system under AS 44.41.035;

(13) from a conviction for a sex offense shall submit to regular periodic polygraph examinations; in this paragraph, "sex offense" has the meaning given in AS 12.63.100.

* **Sec. 11.** AS 47.17.068 is amended to read:

Sec. 47.17.068. Penalty for failure to report. A person who fails to comply with the provisions of AS 47.17.020 or 47.17.023 and who knew or should have known that the circumstances gave rise to the need for a report, is guilty of a **class A** [CLASS B] misdemeanor.

* **Sec. 12.** The uncoded law of the State of Alaska is amended by adding a new section to

1 read:

2 DIRECTION TO DEPARTMENT OF PUBLIC SAFETY CONCERNING
3 CENTRAL REGISTRY OF SEX OFFENDERS AND CHILD KIDNAPPERS. The
4 Department of Public Safety shall provide on the Internet website that the department
5 maintains for the central registry of sex offenders and child kidnappers information as to how
6 members of the public using the website may access or compile the information relating to
7 sex offenders or child kidnappers for a particular geographic area on a map. The information
8 may direct members to mapping programs available on the Internet and to Internet websites
9 where information contained in the registry has already been converted to a map or
10 geographic format.

11 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 APPLICABILITY. Sections 1, 2, 4 - 7, and 11 of this Act apply to offenses committed
14 on or after the effective date of this section. References to prior offenses or convictions in
15 secs. 4 and 6 of this Act include offenses committed before, on, or after the effective date of
16 this section. Sections 3 and 10 of this Act apply to persons on probation or parole for offenses
17 committed before, on, or after the effective date of secs. 3 and 10 of this Act.

18 * **Sec. 14.** Sections 3 and 10 of this Act take effect July 1, 2007.

19 * **Sec. 15.** Except as provided in sec. 14 of this Act, this Act takes effect immediately under
20 AS 01.10.070(c).